

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE: )  
 )  
ELECTRONIC SIGNATURES AND )  
RETENTION OF ORIGINAL DOCUMENTS )

**GENERAL ORDER 12-01**

To facilitate the procedures in aid of electronic filing, to supplement Local Bankruptcy Rules 5005-4.08 and 5005-4.09, to give full effect to Federal Bankruptcy Rule 9011, and in consideration of evidentiary requirements, the Court hereby adopts the following retention requirements for documents filed by, or on behalf of, non-registered users of the Court's CM/ECF system, or for registered users that utilize electronic procedures to file documents other than through the registered user's CM/ECF log-in and password.

**A. Handwritten Signatures**

When persons who are not registered users of the Court's CM/ECF system (e.g., non-attorneys) affix a typewritten signature to a document filed in a case (such as a proof of claim, affidavit, or declaration), or when a registered user files a document in a case other than through logging into the Court's CM/ECF system (such as when using the E-Claims filing program), the filer, or the attorney submitting the document to the Court, must maintain an original copy of the document that bears the filer's handwritten signature until the later of:

1. The final disposition of the case, including appeals or expiration of time for appeal; or
2. The expiration of any relevant statute of limitations.

**B. Production of Original**

On request of the Court or a party, the filer of the document, or the attorney submitting the document to the Court, must provide the document bearing the handwritten signature for review.

  
Hon. Patrick M. Flatley (Date)  
Chief Judge, United States Bankruptcy Court, N.D.W. Va.

**NOTES:**

Under Fed. R. Bankr. P. 5005(a)(2), a court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. As of the date of entry of this General Order, the Judicial Conference has not established any technical

standards. Rule 5005(a)(2) further states that a document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of "applying these rules, the Federal Rules of Civil Procedure made applicable to these rules, and § 107 of the Code." Rule 5005(a)(2) is modeled after Fed. R. Civ. P. 5(d)(3).

Consistent with Fed. R. Bankr. P. 5005(a)(2), this Court adopted N.D.W. Va. LBR 5005-4.09(a) in 2004 which provides that "[t]he user login and password required to submit documents to the electronic filing system serve as the filing user's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of Federal Rules of Civil Procedure, Rule 11, Official Bankruptcy Rule 9011, the local rules of the Court, and any other purpose for which a signature is required in connection with proceedings before the Court." Consequently, documents filed electronically through the Court's CM/ECF system that bear an /s/ and a typewritten signature constitute the original signature of the filing user. Signatures on documents filed with the Court are important for purposes of Fed. R. Bankr. P. 9011 because the Court is directed to strike unsigned documents, and, by signing a document, the filer is making important representation to the Court – the violation of which subjects the filer to sanctions.

Local Rule 5005-4.09 is consistent with the language of the United States Supreme Court in *Becker v. Montgomery*, 532 U.S.757, 764 (2001). In that case, the Court held that a typewritten name is insufficient as an original signature for purposes of Fed. R. Civ. P. 11, the rule upon which Fed. R. Bankr. P. 9011 is based. In the Court's opinion, however, it stated that "[t]he local rules on electronic filing provide some assurance, as does a handwritten signature, that the submission is authentic. Without any rule change so ordering, however, we are not disposed to extend the meaning of the word 'signed,' as that word appears in Civil Rule 11(a), to permit typed names. As Rule 11(a) is now framed, we read the requirement of a signature to indicate, as a signature requirement commonly does, and as it did in John Hancock's day, a name handwritten (or a mark hand placed)." *Id.* at 764.

In addition to Rule 9011, documents with typewritten signatures create evidentiary issues when prosecuting fraud claims. Under Fed. R. Evid. 1002, "[t]o prove the contents of a writing . . . the original writing . . . is required, except as otherwise provided in these rules or by Act of Congress." Rule of Evidence 1003, however, provides that duplicates are admissible to the same extent as an original "unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances, it would be unfair to admit the duplicate in lieu of the original."

When registered users file documents through the Court's CM/ECF system, the filer's typewritten signature is the original signature for purposes of Rule 9011, and the problem of forged signatures is extremely unlikely to occur. The register user's log-in and password clearly identifies the user when the document is filed. There is almost no possibility that a document can be altered or changed once filed because the CM/ECF application provides no access to outside filers to alter a document. CM/ECF incorporates encrypted numbers to each document submitted to the Court and checks continually to ensure that no changes are made to the document without authorization.

With the advancement of technology, however, it is now possible to file documents in CM/ECF without being a registered user. Proofs of claim may be electronically filed with the Court without the filer being a registered CM/ECF user. Also, attorneys in a case may file signed declarations or affidavits of individuals bearing their typewritten signatures. When this happens, both Rule 9011 and evidentiary issues are implicated. Consequently, when instances not subject to Bankr. N.D.W. Va. 5005-4.09 occur, this General Order requires the filer of the document with the typewritten signature, or the document's author, to maintain an original signature on file, and to produce that document on demand.